



Inspection Lead time:

The steering, prioritization and monitoring of simple and complex criminal cases in Sint Maarten.

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Client: Law Enforcement Council

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Abbreviations

AR	General Criminal Investigations Department (<i>Algemene Recherche</i>)
CCLR	Coordination Committee National Detectives (<i>Coördinatie Commissie Landsrecherche</i>)
COZ	Coordinator Operational Affairs (<i>Coordinator Operationele Zaken</i>)
CRO	Coordinating Investigative Prosecutor (<i>Coördinerend Recherche Officier</i>)
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
JASAP	Justice As Soon As Possible
KMar	Royal Netherlands Marechaussee (<i>Koninklijke Marechaussee</i>)
KPSM	Police Force Sint Maarten (<i>Korps Politie Sint Maarten</i>)
LRSM	National Detectives Sint Maarten (<i>Landsrecherche Sint Maarten</i>)
LRS	National Detectives Information System (<i>Landsrecherche Informatie Systeem</i>)
OM	Public Prosecutor's Office (<i>Openbaar Ministerie</i>)
OvJ	Public Prosecutor (<i>Officier van Justitie</i>)
AG (PG)	Attorney General (<i>Procureur Generaal</i>)
PPG	Attorney General's Office (<i>Parket Procureur Generaal</i>)
PV	Official Report (<i>process-verbaal</i>)
RST	Detective Cooperation team (<i>Recherche Samenwerkingsteam</i>)
TBO	Anti-corruption Taskforce (<i>Team Bestrijding Ondernijning</i>)
TOM	Transaction Public Prosecutor's Office (<i>Transactie Openbaar Ministerie</i>)
WvSv	Code of Criminal Procedure (<i>Wetboek van Strafvordering</i>)

Foreword

The Law Enforcement Council (the Council) stipulated in its annual plan that an inspection focusing on the lead time of criminal cases within the justice chain would take place in 2022. This inspection was supposed to take place in 2018 but was then postponed due to unforeseen circumstances. During that period, the Council received signals that the handling of criminal cases in the first instance was not occurring expeditiously.

In this inspection, the Council examined the extent to which the judicial organizations, in this case the Police Force Sint Maarten, the National Detectives Sint Maarten and the Public Prosecutor's Office in Sint Maarten, are equipped to handle criminal cases expeditiously and in favor of a reasonable time of up to two years. The focus of this inspection was specifically on the steering, prioritization and monitoring of cases by the organizations and the complexity of the cases.

The inspection shows that the judicial organizations are currently sufficiently equipped in terms of steering, prioritization and monitoring and, during the inspected period, predominantly succeeded in handling criminal cases in the first instance expeditiously and thus in favor of the reasonable period of a maximum of two years. This is despite several observed bottlenecks in terms of preconditions for carrying out the work, including a structural lack of capacity and expertise. However, in terms of steering, the Council sees opportunities in the area of registration and linking of systems.

The Council expects the Minister to follow up on the Council's recommendations to address these bottlenecks in the short term. This in the interest of victims and suspects.

The Council thanks the various chain partners for their cooperation in this inspection.

LAW ENFORCEMENT COUNCIL

Mr. M.I. Koelewijn, chairman

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Summary and Recommendations

Summary

Introduction

The Law Enforcement Council (Council) carried out an inspection regarding the extent to which the judicial organizations are equipped to handle criminal cases in the first instance in Sint Maarten expeditiously and thus in favor of a reasonable time. The credibility and legitimacy of investigation and prosecution are served by the efficient handling of investigations. The fact that an investigation must be dealt with expeditiously is a circumstance that the court considers when determining whether the reasonable time of a maximum of two years has been exceeded. With its inspection, the Council intended to examine to what extent the investigative services (the Sint Maarten Police Force (KPSM), the National Detectives Sint Maarten (LRSM)) and the Public Prosecutor's Office (OM) in Sint Maarten are equipped to achieve this in practice. This mainly concerns the efficiency of the criminal investigation and the assessment by the OM. Ultimately, when a criminal case is brought to trial, this could (partly) influence the judge's assessment of compliance within a reasonable time. To answer the central question, five sub-questions were formulated about prioritization, type of criminal case, steering, monitoring, and bottlenecks.

Legislation and policy

The obligation to handle matters expeditiously in favor of a reasonable time is recorded in international laws and regulations. This obligation as stated in these international treaties is valid in Sint Maarten and has been implemented in local laws and regulations, including the Constitution and the Penal Code and Criminal Procedure Code. A reasonable time has been defined in the case law of the European Court of Human Rights (ECtHR) as a maximum period of two years. In criminal cases, a judgment must therefore be rendered within a maximum of two years (from the first act of prosecution).

Furthermore, there is no general and/or specific written policy at strategic or operational level for the lead time of cases. According to the investigative services and the OM, there is no need for this either. This is because the lead time of cases generally does not cause any issues currently. The Council, however, considers it desirable that policy be formulated over time.

Lead time investigations

The Council has not been able to gain insight into whether the lead time of the entire criminal justice chain is expeditious. However, based on the figures, the interviews, and the number of sentence reductions during the inspected period, the Council concludes that the expeditious handling of criminal cases has been improving in recent years. However, to really be able to say something about the lead time of, and between the organizations and thus the chain-long lead time, it is important to ensure that the registration and the systems used are compatible with each other. This is currently not the case.

The lack of general preconditions such as capacity, expertise and resources in the services affects the lead time, especially in more complex cases. However, the investigative services nevertheless succeed in generally handling the investigations expeditiously. This is because the judicial organizations focus on the prioritization, steering, and monitoring of cases, for the benefit of, among other things, the lead time. At the KPSM, this is entrusted to a steering group consisting of members of the OM and the KPSM. At the LRSM, the National Detectives Coordination Committee (CCLR) consisting of members of the OM and the LRSM is responsible for this. However, it remains a challenge for the services to maintain (monitor) progress, especially in complex cases.

A shortage of hearing capacity at the Court in Sint Maarten can also possibly play a role in being able to settle cases in the first instance expeditiously and thus within a reasonable time of no more than two years. At present, the planning of cases by the OM is still within acceptable terms. Cases are planned by the OM six months in advance for hearings. However, the OM expects this to be eight months soon, while in the recent past there was still room to plan things three months in advance.

Case type and prioritization

The Council examined the influence of the type of criminal case on the lead time. The lead time of, in particular (in terms of evidence), simple cases is going well because of the Justice as Soon as Possible (JASAP) work method, or the handling of cases within 6 hours. Crucial to this are the short lines of communication between the OM and the KPSM and the timely decision of the OM in a case. Simple cases, usually shooting incidents, are also generally dealt with in a timely manner by the LRSM. However, it remains a challenge for the services to maintain (monitor) progress, especially in complex cases.

Due to the lack of capacity at both services, the prioritization of cases is very necessary. The strict prioritization of cases by the CCLR has had a positive effect with regards to the steering and monitoring of cases by the LRSM.

Steering and monitoring

The Council also looked at how the steering of criminal cases takes place. The OM (leader investigation) steers the investigation, and the services are responsible for carrying out investigative actions within the investigation. This means that the necessary investigative actions are prioritized, controlled and monitored by the services themselves. The OM has a greater steering role in complex cases than in simple cases. This is the case when it comes to stopping an investigation because of feasibility, for example.

Regarding monitoring, the Council examined which instruments judicial organizations have at their disposal to monitor criminal cases. To promote the operational management and monitoring of affairs, the organizations use various types of consultation and information systems. There are positive developments, especially regarding the latter. The OM's PRIEM (Parquet Registration and Information Management System) system has been further developed and management reports can be produced. In addition, the Actpol-system of the KPSM was recently expanded with a detective module and the LRSM has built its own information system. The Council does see opportunities in the field of registration and the linking of the systems used. Including generating usable data and calculating the lead time of a case within the entire chain.

Finally, the Council looked at the bottlenecks related to the expeditious handling of criminal cases in favor of a reasonable time. The steering and monitoring of cases by the KPSM encountered several bottlenecks. The fact that there is only one team leader for the General Investigation Department (AR) instead of the official 2 FTEs means a high workload that has consequences for the steering and monitoring of cases. The Council considers this a very precarious situation and calls attention to it. The workload of the detectives is also high. This sometimes has negative consequences for the timely handling of cases for the hearing. Finally, the quality of the files also deserves the necessary attention. The LRSM also still lacks the necessary capacity and expertise to handle complex cases.

General conclusion

With its inspection, the Council intended to examine to what extent the judicial organizations are equipped to handle criminal cases expeditiously. Despite the identified indirect and external bottlenecks, the judicial organizations are currently sufficiently equipped to deal with criminal cases in the first instance expeditiously in favor of a reasonable time. The Council still sees possibilities, particularly regarding the preconditions for carrying out the work, and the registration and systems

used. The Council therefore hopes that the following recommendations can contribute to a further improvement in the lead time of criminal cases. If the investigation and prosecution can be sped up, the Council believes that efforts should be made to do so to the benefit of both suspects and victims.

Recommendations

The Council recommends the following to the Minister of Justice of Sint Maarten:

Table 1. Recommendations

	To the Minister of Justice
1	Develop strategic goals for an efficient allocation of the available resources in relation to the objectives in consultation with the investigative services.
2	Ensure that the JASAP work method is evaluated by the investigative services for even better results.
3	Encourage the investigative services to continue to free up capacity for the JASAP work method to ensure continuity.
4	Ensure that the preconditions (e.g., capacity) of the investigative services are met to meet the increasing needs and to enable them to (continue to) conduct investigations expeditiously.
5	In the context of steering and for the benefit of an expeditious lead time, ensure that the registration and the systems used by the investigative services and the Public Prosecutor's Office are set up in such a way that the lead time of both the organizations and the chain is clear.
	To the Minister of Justice regarding the OM
6	Engage in consultation with the Court as soon as possible about possibilities to increase the hearing capacity.
7	Ensure that there is more insight into the affairs of the AR, for example by carrying out a clean-up exercise together with the KPSM.

1. Introduction and background

1.1 Introduction

The Law Enforcement Council (hereinafter: the Council) is tasked with the general inspection of the various services and institutions that are part of the judicial chain in Curaçao, St. Maarten, and on Bonaire, St. Eustatius and Saba, and the effectiveness and quality of judicial cooperation. The inspections relate to the effectiveness, quality of the performance of tasks and management. In addition, the Council is charged with the general inspection of the quality and effectiveness of judicial cooperation between the countries.¹

The Council has included several topics in its annual plan for 2022. One of the topics is an inspection of the lead time of criminal cases in the criminal justice chain.

Background

Based on the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6 (1) ECHR), everyone has the right to a fair and public hearing within a reasonable time frame. The right to have a case heard within a reasonable time has been highlighted in several decisions of the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*). Courts may attach consequences for judicial authorities' failure to comply with that right.

According to a judgment of the Supreme Court, the basic principle in the trial of a case in first instance is that the hearing of the case should be completed with a final judgment within a maximum of two years after the commencement of the reasonable time, unless there are special circumstances. However, an exception should be made for cases where the accused is in pre-trial detention in connection with the case, and/or the criminal law for juveniles has been applied. In such cases, the case in first instance should be handled within sixteen months, unless there are special circumstances/factors. Some factors that may affect the duration of a case, according to the Supreme Court, are the complexity of the case, the influence of the accused and/or his counsel on the course of the proceedings, and the manner in which the case has been handled by the competent authorities (including the expediency).

This issue touches the very core of the functioning of the criminal justice chain. The credibility and legitimacy of investigation and prosecution are served by the efficient handling of investigations. The fact that an investigation must be handled expeditiously is in fact a circumstance that the judge considers when determining whether the reasonable time of up to two years has been exceeded. It is therefore important to conduct and complete criminal investigations within the established (legal) frameworks (of time). The social impact on a person's life if they are kept in ignorance for a long time is also important here. This applies to both the accused and the victim.

In Sint Maarten, as an example, a case made headlines regarding (among other things) the lead time. Namely, those involved had received sentence reductions because too much time had elapsed between the conviction (2018) and the time when an act of prosecution against the defendants was carried out by the government, such that the defendant had to have understood that criminal proceedings would follow against him. The latter took place in 2015.² An act of prosecution is defined as any formal act emanating from the prosecution or court to reach an enforceable court decision in the pretrial phase.³ In this case, therefore, the reasonable time of two years had been exceeded.

¹ Kingdom Act of July 7, 2010, regulating the establishment, tasks and powers of the Law Enforcement Council of Curaçao, of Sint Maarten and of Bonaire, St. Eustatius and Saba (Kingdom Act Law Enforcement Council).

² ECLI:NL:OGEAM:2018:109

³ ECLI:NL:PHR:2021:480

This inspection was originally scheduled for 2018. At the time, there were signs that criminal cases in the investigation phase and at the Sint Maarten Public Prosecutor's Office (OM) were lingering for a long time. Due to circumstances, the inspection was postponed and carried out in 2022.

1.2 Objective of the inspection

Originally, the Council intended to assess the lead time of the entire criminal justice chain (chain-long lead time) as well as the lead time per chain partner. However, the Council's preliminary research revealed that the objective of assessing the lead time could not be achieved due to a lack of and/or inconsistent data. For example, registration is done by the various organizations based on the topics relevant to their work. The Council therefore adjusted its objective. With the current inspection, the Council aims to gain insight into the extent to which judicial organizations are equipped to handle criminal cases expeditiously and thus in favor of a reasonable time. Any bottlenecks involved are identified by the Council and recommendations are made. Not only for the benefit of the judicial organizations involved, but also for the victims and suspects.

1.3 Central question and assessment framework

Central question

To what extent are judicial organizations equipped to handle criminal cases expeditiously in favor of a reasonable time?

To answer the central question, the following sub-questions were formulated:

- a. How are criminal cases prioritized?
- b. How does the type of criminal case affect the lead time?
- c. How does the steering of criminal cases take place?
- d. What tools do judicial organizations have at their disposal to monitor criminal cases?
- e. What are the bottlenecks regarding the expeditious processing of criminal cases in favor of a reasonable time?

Assessment framework

To answer the formulated sub questions, an assessment framework was drawn up using legislation and regulations, case law, policy, research reports and other relevant information. It became apparent from these documents that the aspects legal framework and policy, prioritization, steering and monitoring are determining factors in the lead time. The Council will therefore examine the current practices of the judicial organizations by assessing them against these aspects. The Council will also look at possible internal and external factors that influence the lead time of criminal cases, such as: human capacity, expertise, and resources (the management aspects).

At the Sint Maarten Police Force (KPSM), the National Detectives Sint Maarten (LRSM) and the OM, the prioritization and expediency of the handling (steering and monitoring) of criminal cases will be looked at, as well as in what type (complexity) of criminal cases the lead time plays a role.

Definition of lead time

The Council defines the lead time as the time required per organization for the (efficient) handling of a criminal case from the date of inflow to the date of outflow.

The inflow date for the services and the OM is the date of registration of a criminal case at the organization concerned and the outflow date for the services is the date of submission of a criminal case to the OM and for the OM the date of assessment of a criminal case.

1.4 Scope of the inspection

The study covers the period from 2018 to 2021. In this inspection, the Council examines part of the lead time, being the moment an investigation is registered up to and including the prosecutor's assessment about the (further) prosecution. The inspection does not focus on the following.

(The lead time at) The Court is left out of the equation as this organization falls outside the Council's jurisdiction. The Council already pointed out in paragraph 1.2 that the inspection focuses on how equipped the organizations are. The exact determination of the lead time of and between organizations or the chain is not included as such due to the registrations not being linked. However, as much insight into this will be given where possible. The Council will therefore focus on the aspects that influence the expeditious lead time of the organizations KPSM, LRSM and the OM and the possible consequences of this for the benefit or detriment of the reasonable time.

In addition, in this inspection the Council does not elaborate on the services' work procedures. Indeed, these procedures have already been described in previous reports of the Council and the Council refers to them accordingly. It concerns the reports: 'The investigation process by the criminal investigation department'⁴, 'The Public Prosecutor's Office in the incident-oriented investigation in Sint Maarten'⁵, 'Review National Detectives'⁶ and, 'Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office'⁷.

1.5 Research method

This inspection was conducted through literature review and interviews with portfolio holders, (policy) advisors and staff of judicial organizations/services that have a (legal) role in the investigation and prosecution of criminal cases.

This inspection was conducted in five phases:

1. orientation phase: global exploration of the subject for the purpose of determining the research approach and writing the plan of approach.
2. desk research: literature research, working out the theoretical/legal framework and preparing the interviews.
3. data collection: conducting interviews and requesting statistics.
4. analysis and reporting: based on the central and sub-questions, analyzing the collected information and preparing the draft inspection report.
5. reaction and finalization: the respondents were given the opportunity to react to the draft report, after which any comments were incorporated, and the final report was adopted by the Council and presented to the Minister of Justice.

1.6 Reading guide

After the introductory Chapter 1, Chapter 2 describes findings on the legal framework and Chapter 3 presents aspects relevant to the lead time of criminal cases within the criminal justice chain. Chapter 4 contains the analysis with conclusion and recommendations.

⁴ Law Enforcement Council, (2013). The investigation process by the criminal Investigation department in Sint Maarten. Inspection by the Law Enforcement Council on the functioning of the investigation process of the criminal investigation department of the Sint Maarten Police Force.

⁵ Law Enforcement Council, (2013). The OM in incident-based investigation in Sint Maarten.

⁶ Law Enforcement Council, (2021). Inspection: Review of Sint Maarten's National Detectives Agency.

⁷ Law Enforcement Council, (2015). Selectivity in the investigation and prosecution policy of the Public Prosecutor's Office in Sint Maarten.

2. Background information: legal framework

2.1 Introduction

The legal framework is always the point of departure for judicial organizations. The Council has drawn from international and national laws and regulations to determine what frameworks apply to the relevant judicial organizations within the criminal justice chain for the expeditious handling of criminal cases in favor of a reasonable time in Sint Maarten.

2.2. Treaties and national laws and regulations

International treaties

In the international domain, the International Covenant on Civil and Political Rights (art. 14)⁸, the European Convention on Human Rights (ECHR) (art. 6)⁹ and the Convention on the Rights of the Child (art. 40)¹⁰ are most relevant to the subject of lead time. These treaties are also applicable in St. Maarten. The conventions use the terms "undue delay," "within a reasonable time," and "without delay," respectively, to indicate the importance of hearing and trying (criminal) cases within a reasonable time.

Furthermore, it is apparent from the case law of the European Court of Human Rights (ECtHR) that Member States must provide effective remedies to prevent the exceeding of 'the reasonable time', as provided for in the aforementioned article 6 ECHR, and the citizen must be compensated for the damage suffered as a result of the exceeding of 'the reasonable time'.¹¹

National laws and regulations

Article 26 of the Sint Maarten Constitution states that: 'Every person in the determination of his civil rights and obligations and in the prosecution of a criminal offense is entitled to a fair and public hearing of his case, within a reasonable time by an independent and impartial tribunal. (...)'.¹² In addition, article 27(2) of the same Constitution states: 'Any person arrested or detained in accordance with paragraph 1(c) of this article shall be brought promptly before a judge and shall have the right to trial within a reasonable time or to be released pending trial'.¹³

In Chapter 1, it has already been indicated that according to a Supreme Court judgment, when a case is tried in first instance, the basic principle is that the hearing of the case should be completed with a final judgment within a maximum of two years after the time to be judged on its reasonableness has begun, unless there are special circumstances.

⁸Article 14, paragraph 1: In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (c) to be tried without undue delay.

⁹Article 6, paragraph 1: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

¹⁰Article 40, paragraph 2 iii: To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.

¹¹ Kudla vs. Poland 26 oktober 2000.

¹² Article 26 of the Constitution of Sint Maarten.

¹³ Article 27 paragraph 2 of the Constitution of Sint Maarten.

According to the laws and regulations, respectively, the police criminal investigation department is responsible for the investigation of criminal offenses¹⁴, the OM for the investigation and prosecution¹⁵, and the Court for the trial¹⁶. In this regard, the OM oversees and steers the police investigations (see further section 3.2.5). By virtue of the expediency principle, the OM is also authorized to decide not to investigate or not to continue a criminal case. Alternatively, the OM has the power to refrain from prosecuting.

The Code of Criminal Procedure ("WvSv")¹⁷ is leading for these organizations in terms of determining the time frame within which investigative actions must take place in an investigation, for monitoring the progress of criminal cases and for the prosecution. The WvSv does not stipulate (specific) deadlines within which criminal investigations (in the preliminary phase) must be completed. In various articles of the WvSv, the term "as soon as possible" is used each time to indicate the deadline to be adhered to. It is therefore not necessary to list all these articles. A couple articles are listed below for illustrative purposes:

- Article 89 paragraph 1 of the WvSv stipulates that the suspect is brought before the examining judge of instruction as soon as possible, but no later than twenty-four hours after the implementation of the order to extend the detention has started. The counsel is authorized to be present at this. He shall be given the opportunity to make the necessary observations;
- Article 207 paragraph 1 of the WvSv stipulates that if, as a result of the investigation, the public prosecutor is of the opinion that prosecution must take place, he will do so as soon as possible.

In addition to the more generally formulated term "as soon as possible," more specific deadlines apply during the investigation process. For example, Articles 83 and 87 of the WvSv stipulate that during the investigation, the public prosecutor (OvJ) or the assistant public prosecutor may order that a suspect remain at the disposal of the judicial authorities and be taken into custody at a place to be designated for that purpose. Such an order is effective for a maximum of two days but may be extended once for a maximum of eight days in case of urgent need. Furthermore, Articles 92 and 93 of the WvSv state that the examining judge of instruction, at the request of the OvJ, may grant an order for the detention (provisional custody) of the suspect. The detention order is effective for a period to be determined by the examining judge of instruction, not exceeding eight days, which begins at the time of execution. It may also be extended once, for up to eight days.

¹⁴ Kingdom Act Police of Curaçao, of Sint Maarten and of Bonaire, Sint Eustatius and Saba article 7 paragraph a.

¹⁵ Kingdom Act Public Prosecutor of Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba article 9 paragraph b.

¹⁶ Kingdom Act Joint Court of Justice article 4 paragraph 1 b.

¹⁷ National ordinance of November 5, 1996 establishing a new Code of Criminal Procedure.

3. Inspection results

3.1 Legal framework and policies

3.1.1 Introduction

This chapter describes the findings in practice regarding the obligation of judicial organizations to complete a case within a reasonable time, under various (inter)national laws. It also discusses the consequences at trial when this obligation is not met.

3.1.2 Legal framework

Criterion: Pursuant to international treaties, everyone is entitled to a fair and public hearing within a reasonable time. The treaties in question are valid for Sint Maarten. And the resulting international obligations have been implemented in national laws and regulations. In case time periods are exceeded, sanctions are available to the judge.

Legal framework

The obligations mentioned in the international treaties in Chapter 2 are included in the Constitution and various national regulations. The inspection revealed no bottlenecks in terms of the legal framework.

The OM and the investigation services all indicate that efforts are made to complete investigations "as soon as possible". The aforementioned legal requirements and case law are leading in this regard.

Case law on exceeding the reasonable time

As indicated in previous chapters, according to case law, the reasonable time to dispense justice is a maximum of two years, unless, for example, the accused is in pre-trial detention and/or the criminal law for juveniles has been applied. Then the maximum period is shorter. The Sint Maarten Court of First Instance has rendered several rulings in which the (exceeding of the) reasonable time was specifically taken into account and where, as a result, punishment reduction was applied. For example, on November 11, 2018, in one such criminal case, the defense argued that the reasonable time had been exceeded. The court then considered the following:

"The obligation to render justice within a reasonable time is among other things based on article 6, first paragraph, of the ECHR, which also applies in Sint Maarten. The period starts from the moment that an act of persecution against the accused was committed on the part of the government, such that the accused had to understand that criminal proceedings would follow against him. In general, the criminal case must be completed within two years from that moment. In this case, the Court marks as the first act of prosecution the searches that took place on October 13, 2015. More than three years have passed since then. The reasonable time has therefore been exceeded. The Court will consider this in sentencing."¹⁸

In practice, the judge takes into account the reasonable time. In the examined period from 2018 to 2022, there were about ten rulings in which, among other things, the exceeding of the reasonable time was addressed. Of those rulings, the Court of First Instance in Sint Maarten ruled in five cases that the reasonable time had been exceeded. Table 3 shows these rulings.

¹⁸ ECLI:NL:OGEAM:2018:111

Table 3. Judgments of the Court of First Instance on exceeding the reasonable time (2 years).

Nummer	Datum uitspraak	(Ketenlange) Doorlooptijd	Sanctie
ECLI:NL:OGEAM:2018:109	28/11/2018	13/10/2015 – 28/11/2018	In principle, it was a partially unconditional prison sentence, which the court moderated to a fine, a suspended prison sentence and deprivation of the defendant's right to hold public office due to the reasonable time being exceeded.
ECLI:NL:OGEAM:2018:110	28/11/2018	13/10/2015 – 28/11/2018	In principle, it was a partially unconditional prison sentence, which the court moderated to a fine, a suspended prison sentence and deprivation of the defendant's right to hold public office due to the the reasonable time being exceeded.
ECLI:NL:OGEAM:2018:111	28/11/2018	13/10/2015 – 28/11/2018	In principle, the fine was ANG. 75,000, which the court mitigated to a fine of ANG. 50,000 due to the reasonable time being exceeded.
ECLI:NL:OGEAM:2019:33	05/06/2019	Midway December 2016 – 05/06/2019	According to the judge, there was no period that had been exceeded for such a length of time or caused by such circumstances. The court sufficed with the mere finding that the reasonable time had been exceeded.
ECLI:NL:OGEAM:2021:56	07/05/2021	07/09/2018 – 07/05/2021	In principle, the sentence was 30 months with deduction of remand, which the judge moderated to 27 months with deduction of remand due to the reasonable time being exceeded.

Source: www.rechtspraak.nl

3.1.3 Policies

Criterion: Policies have been established by the judicial organizations regarding the lead time of criminal cases and are being followed.

At the strategic level, the Ministry of Justice (as far as the management aspects are concerned), the OM/the Attorney General's Office (PPG) (investigation leader) and the heads of the services (operational deployment) are responsible for (jointly) steering the services to achieve the set goals, including steering on the lead time (see also below para 3.2.5.1.). In the past, however, the Council has frequently observed that there is no strategic vision/policy for the services and that the goals that are in place often cannot be achieved due to a structural lack of personnel and resources. The whim of the day then determines how available resources are used by the services.

The Ministry of Justice indicates that it has no role in formulating policy on the lead time in criminal cases. According to the ministry, the lead time in criminal cases does not currently pose any bottlenecks. However, the ministry also indicates that it has limited insight into this since it is only responsible for the management aspects of the local investigative services, such as capacity. Issues in this context are discussed with the services only from a policy and priority perspective. This does not include the lead time of criminal cases, according to the ministry. The ministry further notes that they are also unable or unwilling to influence the lead time of individual criminal cases. The ministry does intend to bring policy on the lead time in general to the attention of those responsible for it by means of an agenda item. Furthermore, the Minister's priorities, for example, can affect how the capacity of the KPSM is deployed and thus indirectly affect the processing time of investigations. Indeed, for example, a decision can be made to prioritize a particular type of crime problem, which means that other cases have to be put on hold.

The OM/PPG states that no written policy has been drawn up by the OM on the lead time of criminal cases in Sint Maarten and that no agreements have been made with the services in this regard. According to the OM/PPG there is also no need for a policy because the lead time of criminal cases currently does not pose any bottlenecks. Also, given the small scale and current turnover, no policy is needed at this time, according to the OM/PPG. Criminal cases are regularly reviewed by the OM and the prosecutor of the case is responsible for keeping an eye on the lead time of his own cases. Also, no chain standards for the lead time of the different types of criminal cases have been established. This is for example the case in the Netherlands.

The National Detectives of Sint Maarten have formulated the following guideline regarding the duration of investigations: incident-oriented (simple) investigations take a maximum of three months, and problem-oriented (complex) investigations take an average of six months or longer. According to the LRSM, this guideline was published in the LRSM's Annual Plan 2022 and communicated to the Minister of Justice in the LRSM's "Operational Plan 2022". The intention is to incorporate the guideline into a work process description. The guideline has not yet been implemented within the organization. The current work process of the LRSM is that when an instruction is obtained from the Attorney General (PG) to start an investigation, a plan of action is always prepared indicating what is to be done in the investigation (investigative actions), within what time frame and how much capacity is needed for it. The deadline is estimated by the detectives based on experience, the type of case (complex/simple) and the investigative actions required. However, meeting a deadline remains difficult, because as the investigation progresses, new information can cause it to take longer than initially planned, according to interviewees of the LRSM (see further 3.2.4).

One month before the day of the hearing, the prosecution provides a list of the cases to be heard to the KPSM. The cases on it are then completed as soon as possible (if not already). The KPSM does not use guidelines for (target) deadlines for the completion of the investigation, although target dates are mentioned in the cases for the various investigative acts (see further section 3.2.4).

All interviewed services indicate that the lack of policy on the lead time of criminal cases does not currently cause any bottlenecks.

3.2 Lead time criminal cases

3.2.1 Introduction

This chapter addresses the topics of insight into (chain-long) lead time, prioritization, steering and monitoring of cases. Furthermore, other factors, such as the type of case, capacity and resources, that directly and indirectly play a role on the lead time are also discussed.

3.2.2 Insight into (chain-long) lead time

Criterion: There is insight into the lead times of the entire criminal justice chain (chain-long lead time). And there is insight into the lead time of the individual organizations.

The original objective of the inspection was to gain insight into the lead time of criminal cases in the entire criminal justice chain (chain-long lead time) and the lead time within the individual organizations, however, after taking stock of the information systems in use by the judicial services and of the data available during the preliminary research, it emerged that registration data from one chain partner are (virtually) impossible to relate to data from another chain partner, this because different unique 'identifiers' are used for criminal cases. This makes it impossible for the Council to calculate a chain-long lead time of criminal cases within the inspection period. However, it is possible for the Council to use the data requested from the services to paint a picture of the lead time within the individual organizations (per chain partner). This concerns in particular the date of inflow and outflow. This data is included in the relevant paragraphs.

3.2.3 Lead time in the investigation and prosecution phase

Criterion: The investigation and prosecution of criminal offenses takes place expeditiously.

Investigation

The ministry points out that before 2018, there were several cases that were not completed expeditiously by the services and, as a result, hung over the heads of suspects like the "sword of Damocles." A suspect should not have to wait such a long period of time to know where they stand, according to the ministry. This has changed recently. The arrival of the Anti-corruption Taskforce (TBO) in 2016 is viewed by the ministry as a "positive influence" in, for example, cases of undermining or cases involving civil servants or administrators. This is because these types of cases no longer stagnate at the local services due to the complexity of the case and the lack of resources to complete them expeditiously. The ministry is currently of the opinion that the lead time of criminal cases at the services is not excessive and that the criminal cases are handled expeditiously and therefore the exceeding of the reasonable time is not likely an issue. The ministry states that it is inherent to a case that it takes time but that the services are committed to dealing with them 'as soon as possible'. However, specific non-lead time-related preconditions for investigating and prosecuting criminal offenses can affect whether or not the services are able to complete cases, as previous Council inspections have shown. And thus, may also affect the final disposition at the Court within a reasonable time. For example, the capacity shortage of the Sint Maarten Police Force can have a negative impact on the lead time (see further prioritization). The ministry further indicates that the lead time of a case can also be negatively affected if the preconditions of other organizations are also not in order or limited. For example, sufficient hearing capacity must be available at the Court, according to the ministry.

A report from the advocacy also indicates that (the lack of) capacity at the services plays a role in the lead time of cases. It is reported that although it would be desirable for the KPSM, for example, to complete cases more quickly than they currently do, this is mostly done within an acceptable time.

According to the OM/PPG, the lead time of the KPSM is in order as far as simple cases are concerned. Cases that the KPSM completes are usually handled expeditiously and are often settled successfully in court. However, there are also (more complex) cases that cannot be solved and therefore remain shelved. The bottlenecks that are mentioned in this context are mainly capacity, resources and (technical) expertise. In these cases, it is not the long lead time that is an issue, but it is rather a consequence of the circumstances that these cases cannot be handled due to the aforementioned bottlenecks, according to the OM/PPG. These bottlenecks also apply to the LRSM.

An interviewee from the LRSM explains that being able to achieve the shortest possible lead time for investigations of larger/complex cases in particular is only realistic if there is a fully functioning investigation team, where the necessary capacity, knowledge, expertise and resources are present.

Prosecution

During the inspection *General Review of Recommendations (2021)*, which included a review of the aforementioned report on the Public Prosecutor's Offices investigation and prosecution policy, the Council noted that there were a number of issues with regard to the lead time of criminal cases. Among other things, the Council noted that whether the intended lead time of cases was achieved depended in part on available hearing capacity. And that while the handling of small cases went reasonably smoothly, it was complicated for the OM to schedule large cases. An additional factor was

that Sint Maarten did not have its own criminal judges at that time.¹⁹

The OM/PPG indicates that currently the average time before a case can be scheduled and goes to trial is about six months. Although the OM/PPG indicate that they are satisfied with this, they also indicate that they have mixed feelings about it. This is because the KPSM and the LRSM are understaffed. If the services' preconditions for investigating and prosecuting criminal offenses are brought up to standard - especially those for the AR of the KPSM and the LRSM - this will have an impact on the lead time of cases. This is because the services will potentially supply more cases and there will then be insufficient hearing capacity available. As a result, cases will have to be prioritized and other cases will have to wait to be scheduled for hearing, resulting in longer lead times. The OM will then have to enter into discussions as usual with the Court for more hearing capacity and agreements can then also be made with the services about the lead time, according to the OM/PPG. Currently, the January 2023 hearing capacity (six months ahead) is already being scheduled and the expectation of the OM/PPG is that this will soon become eight months, whereas two years ago (2020) there was still room to schedule cases three (3) months ahead. The average period of six (6) months is not a formal agreement with the Court, but what is now maintained in practice, according to the OM/PPG.

Although according to the OM, cases are assessed within a normal time period and the reasonable time period is currently rarely exceeded, the situation is not ideal, according to the OM. Particularly in ongoing cases where persons have been released from pre-trial detention, the OM wants to allow for a maximum of two months to bring the case to trial. Therefore, this is the time to enter into discussions with the Court about possibly increasing the number of hearings, according to the OM. This is also for the benefit of victims.

Since August 2019, the Court in Sint Maarten has a permanent criminal judge.²⁰ However, the OM/PPG points out that the hearing capacity is generally scarce. It must also be taken into account that the OM in St. Maarten has only four public prosecutors and only one criminal judge is available to hear cases. Nevertheless, according to the OM/PPG, the vast majority of cases can be scheduled for a hearing at the Court within six months. The point of departure remains that the OM handles a case "as soon as possible" (see further section 3.2.4). From the legal profession, it is argued that the time period for hearing a case has now improved since there is a permanent criminal judge on the island. Furthermore, according to the lawyer interviewed, the available hearing capacity depends on how busy it is and can vary between three to four months but can also take five to six months or a year before a case goes to trial. However, according to this interviewee, the lead time remains well within the maximum reasonable time and no sentencing reductions have been applied by the judge in recent cases.

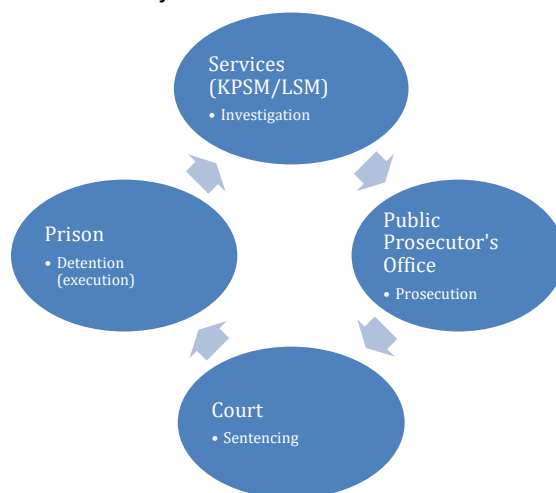
The lawyer interviewed believes, however, that cases that lend themselves well to expedited justice could be settled more quickly at trial. Currently, these take place after an average of 2 to 3 months. This while the preparation of these cases would not require much time and the cases are fairly simple, according to the interviewee.

¹⁹ Law Enforcement Council, (2021). General review recommendations. Sub-inspection 2: Crime Prevention Fund; Investigative and prosecutorial policies of the Public Prosecutor's Office; Enforcement of fines, damages and dispossessions; The Public Prosecutor's Office in Incident-based Investigation; Cooperation between Public Prosecutor's Offices.

²⁰ <http://www.dutchcaribbeanlegalportal.com/news/publications/77-lectures/9246-toespraak-hofpresidentk-eunice-saleh-bij-installatie-rechters-sint-maarten>

The following is a visual representation of the various phases.

Figure 1. Relationship partners criminal justice chain.



3.2.4 Types of cases and prioritization

Criterion: Criminal cases are prioritized according to their investigation indication and impact. The type of case and its impact on the lead time are taken into account.

According to interviewees, the following factors influence the length of the lead time for different types of cases: prioritization, whether or not a suspect is known, the hearing of witnesses, obtaining externally requested information (for example, a probation report or psychiatric report), obtaining evidence from abroad (for example, a report from the Netherlands Forensic Institute), and the use of special investigative powers. The KPSM indicates that a case can also be delayed if, for example, a victim has been severely beaten and cannot make a statement right away. There are also other aspects besides the investigative actions, such as the availability of a lawyer for the suspect, that can affect the duration of a case. If a lawyer is not immediately available, one must be waited on and the case takes longer.

Interviewees from the various services indicate that the type of case, for example, a simple case or complex case or the type of offense, for example, domestic violence, determines the prioritization of a case and thus also affects the lead time. This is because other cases for example have to be put on hold as a result.

The OM/PPG indicates that in specific cases, specific deadlines apply, which also affects the prioritization of cases. In cases with a suspect in pretrial detention, there are specific deadlines for, among other things, the taking into custody, the detention, and the imprisonment. These types of cases must therefore be prioritized over cases involving so-called 'released suspects'. Indeed, in the first mentioned cases, it can happen that pretrial detention is suspended if the legal time periods have not been observed. For example, in cases where the maximum duration of detention has unexpectedly expired, the examining judge of instruction may order detention without further consideration.

Police Force Sint Maarten

Types of cases and prioritization

The earlier mentioned report on the Public Prosecutor's Office in the incident-oriented investigation (2013) contains a description of how criminal cases are prioritized by the KPSM.²¹ The KPSM still employs a division into prio-1, prio-2 and prio-3 cases.²² Prioritization determines how quickly a case is handled (the urgency) and how the available capacity is deployed. Cases in which the suspect is caught in the act have priority, because hard deadlines apply there. In high-priority incidents, certain investigative actions by the KPSM must take place immediately to secure evidence. Witnesses, for example, are interviewed immediately because of possible collusion risks and the risk that they may not remember at a later date exactly what occurred. Camera footage must also be secured quickly because it may be overwritten or no longer be retrievable.

The General Investigation Department (AR) indicates that the department has sufficient basic resources to perform the aforementioned actions and that this does not therefore create bottlenecks in terms of the lead time. According to one AR interviewee, the work could be done even more efficiently than at present if the AR had access to more laptops. Also, the purchase of software programs to view camera images faster would in part have a positive influence on the lead time. In addition, the ability to prepare and print PVs on location is mentioned as a possible improvement in the lead time. This could also have advantages in situations where victims/witnesses are hospitalized. The KPSM indicates in its reaction that six laptops are available for the various investigation teams including the AR. These laptops are provided based on the needs of the teams. In addition, a portable printer is available to the teams and the KPSM is in possession of the necessary software to view images.

The lack of knowledge and expertise within the AR does play a role in the lead time of cases, according to the AR. In addition, time management and being able to prioritize work is an issue within the AR. In addition to these internal factors, there are also external factors that can affect the lead time. The AR sometimes depends on the provision of information by other departments such as forensic investigation or external organizations such as the Netherlands Forensic Institute (NFI). The timely acquisition of (quality) PVs from the Basic Police Care (BPZ) is also a concern.

There is a steering committee consisting of members of the OM and the KPSM that meets once every four to five weeks. During these consultations, the prioritization of major cases (prio-1 cases such as robberies, drugs, human trafficking and murder) is determined and the investigation indication, seriousness of the crime and the social impact are leading. In addition, ongoing cases are also monitored. According to the KPSM, specifically, the lead time of cases is also jointly agreed upon and

²¹ Law Enforcement Council, (2013). The Public Prosecutor's Office in Incident-Based investigation in Sint Maarten. Incident Based Investigation is: The process of investigation in which, in response to a report, information received, one or more reports, or one or more apprehended suspects, a reactive investigation is conducted as efficiently as possible.

²² Priority (prio) 1 cases include murder/killing, rape, robbery (brute force, use of firearms). Priority 2 cases include violent crime (other than simple assault in its simplest form), other sex offenses, arson with a common threat to life or property, residential burglaries, trafficking/possession of firearms, import/export of drugs, local trafficking in hard drugs and human trafficking/smuggling. Simple assault (in its simplest form), property crimes other than residential burglaries, vandalism and other crimes have been designated as priority 3 cases.

monitored in the steering committee. The KPSM also brings project proposals (*haalzaken*) to the steering committee. It is then decided whether or not to pursue it and for what length of time. The OM/PPG indicates that if for example an agreed upon deadline for an investigative act is not met that this is discussed with the KPSM. Failure to meet the deadline is often due to shifts in priorities due to incidents or external delays, for example, because the KPSM is waiting for information from third parties. As a concrete example, it is indicated that in addition to the limited capacity of the services the forensic investigation (investigation by the NFI) can also cause delays in an investigation because it can take an average of two months before results are known. Sint Maarten also does not have a pathologist-anatomist or its own examining doctor, which is problematic in cases with, for example, fatalities.

In case a steering committee case runs too long and there is no chance of success, the case is dropped. According to the OM/PPG, it does happen that at the steering committee meeting the decision is made to drop one or two cases. This is considered normal. This way, other cases that are feasible can be prioritized.

The KPSM also points out that because of the large volume of cases that are submitted to the OM by the KPSM, the OM also has to set priorities. As a result, however, small cases are left on hold longer. The KPSM has noticed this because they submit their final official reports (PV's) on a daily basis, not all of which appear on the monthly list of hearings of the OM. The KPSM indicates that when this is the case, consultations are held with the Prosecutor's Office to find out why this is.

According to the KPSM, a protocol has been established by the OM, the KPSM and the probation service on how to handle cases of relational violence. Such cases take priority over other cases and are handled by the KPSM with priority. Also, such cases usually involve a suspect in pretrial detention. The OM/PPG indicates that the average lead time for relational violence cases from the time of the incident to the case review is one day to three weeks.

The AR handles prio-1 cases as well as prio-2 and prio-3 cases. The AR team leader receives the previously mentioned list of hearings from the OM and ad hoc deadlines are agreed upon with the detectives on that basis, as there is no specific policy on the deadline to be observed. According to the AR, a target date of two weeks is observed, unless the date of the hearing is a month away. The agreement between the OM and the KPSM is that the final PV must be submitted to the OM at least one month before the date of the hearing of the case. It also sometimes occurs that there are a few cases on the list that have not yet been completed (and therefore have been "missed"). In those cases, a higher priority is then given to the case and pressure is applied by the team leader to complete it. Using the list of hearings, the KPSM can also check which PVs have already been received by the OM.

According to the KPSM, it can happen that the final PVs are not handed in on time and the cause of this can be either the KPSM or the OM. At the KPSM, the AR currently represents the biggest bottleneck in this regard. The management in this requires more attention than it currently receives. It also occurs that final PVs are submitted to the OM on time, but that the Prosecutor would like certain actions performed just before the hearing and then increases the pressure. In these cases, the requests must be dealt with urgently, according to the KPSM.

Simple cases (prio-3) are handled by the KPSM and the prosecution through Justice as Soon as Possible (JASAP). The JASAP process means that simple cases are settled within 6 hours (6-hour cases). A

decision is made immediately by the OM and the case is processed immediately. The OM/PPG indicates that the prosecutor on duty goes to the police station daily to review cases and a decision is made within 48 hours for most cases. Therefore, the lead time for these types of cases is short. Should further investigation be required then it becomes a "normal" case with a longer lead time.

The KPSM indicates that due to a lack of capacity at the OM, the OvJ on duty is no longer daily at the police station as agreed, but is currently present once or twice a week for general matters (including JASAP). However, because of the short lines of communication with the OM, direct contact can be made (for example, by phone or email) so that there is no need to wait for the prosecutor on duty to visit and this therefore does not affect the lead time of JASAP cases.

According to interviewees from the KPSM and the OM/PPG, the JASAP work method has had a (positive) impact on the number of cases that can be handled. This is because in these fairly simple cases, a decision is made practically immediately by the prosecutor. As a result, cases no longer stagnate, and this benefits the number of cases on the shelf. The flow of cases is also good, which means that the OM now has a better overview of all cases that are being handled.

In- and outflow of cases

The KPSM provided the Council with overviews showing the date of inflow (date of registration) of criminal cases at the KPSM and the date of outflow (date of registration) of criminal cases from the KPSM sent to the OM. The overviews included the period under review by the Council, being 2018 through 2021. The total number of criminal cases registered during that period was 1,386 (2018: 330, 2019: 389, 2020: 276, 2021: 391). To give an impression of the lead time of cases handled by the KPSM, the Council looked at three of the most common criminal offenses, being assault, theft and drug-related cases, during the said period and selected 10 cases at random from each year. The Council then calculated the duration of the investigations using the data. Table 4 contains the summary compiled by the Council. The table shows for each year for the ten cases the date of inflow, the date of outflow, the type of offence and the lead time in days. As for the lead time, the following can be seen in the table. In 2021 the lead time ranged from 5 days to 140 days (from a few days to over 4 months) and for 2020 it ranged from 16 to 251 days (from just over two weeks to over 8 months). Further, the lead time in 2019 ranged from 19 to 161 days (from almost 3 weeks to over 5 months) and for 2018 ranged from 9 to 317 days (from just over a week to over 10 months). From the summary provided, it could not be determined what type of case (e.g., simple or complex) was involved.

Tabel 4. In- and outflow criminal cases KPSM 2018 -2021.

2021	Date inflow	Date outflow (OM)	Type of offense	Duration (days)
1	18/01/2021	17/02/2021	Assault	30
2	22/01/2021	28/01/2021	Theft	6
3	04/04/2021	12/05/2021	Assault	38
4	15/04/2021	02/09/2021	Opium ordinance	140
5	02/05/2021	16/09/2021	Theft	137
6	07/05/2021	08/07/2021	Assault	62
7	16/08/2021	02/09/2021	Opium ordinance	17
8	27/08/2021	10/11/2021	Theft	75
9	25/09/2021	30/09/2021	Opium ordinance	5
10	02/12/2021	17/12/2021	Theft	15
2020	Date inflow	Date outflow (OM)	Type of offense	Duration (days)
1	01/03/2020	22/07/2020	Assault	143
2	14/03/2020	20/11/2020	Theft	251
3	30/04/2020	24/07/2020	Theft	85
4	01/05/2020	25/05/2020	Assault	24
5	05/05/2020	25/05/2020	Opium ordinance	20
6	07/05/2020	04/08/2020	Theft	89
7	20/06/2020	20/07/2020	Opium ordinance	30
8	17/07/2020	07/10/2020	Assault	82
9	15/09/2020	29/12/2020	Theft	105
10	07/10/2020	23/10/2020	Opium ordinance	16
2019	Date inflow	Date outflow (OM)	Type of offense	Duration (days)
1	24/01/2019	08/03/2019	Theft	43
2	01/02/2019	24/04/2019	Assault	82
3	20/02/2019	13/03/2019	Assault	21
4	20/02/2019	02/04/2019	Opium ordinance	41
5	17/04/2019	25/09/2019	Theft	161
6	05/05/2019	12/06/2019	Assault	38
7	02/06/2019	18/07/2019	Opium ordinance	46
8	25/07/2019	13/08/2019	Assault	19
9	05/08/2019	16/09/2019	Theft	42
10	26/10/2019	29/01/2020	Opium ordinance	95
2018	Date inflow	Date outflow (OM)	Type of offense	Duration (days)
1	12/02/2018	04/05/2018	Assault	81
2	24/02/2018	07/01/2019	Assault	317
3	14/03/2018	24/07/2018	Theft	132
4	17/04/2018	08/05/2018	Assault	21
5	29/04/2018	08/05/2018	Opium ordinance	9
6	12/06/2018	20/07/2018	Theft	38
7	25/08/2018	10/09/2018	Theft	16
8	09/09/2018	18/09/2018	Assault	9
9	28/09/2018	19/06/2019	Theft	264
10	04/11/2018	06/08/2019	Opium ordinance	275

Table 5 shows the average lead time for the three types of offenses from Table 4. For each type of offence, the table shows the total accumulated duration in days of all cases on assault, theft and opium, respectively. Also, based on this, the average duration per case for the respective type of offense is shown. Finally, the total figures and the average over the entire period are also given.

Table 5. Average lead time of categories

2021	Type of offense	Total duration of case all cases (days)	Average duration per case (days)
	Assault	130	43
	Theft	233	58
	Opium ordinance	162	54
2020	Type of offense		
	Assault	249	83
	Theft	530	132
	Opium ordinance	66	22
2019	Type of offense		
	Assault	160	40
	Theft	246	82
	Opium ordinance	182	61
2018	Type of offense		
	Assault	428	107
	Theft	450	112
	Opium ordinance	284	142
2018 until 2021	Type of offense	Total	
	Assault	967	69
	Theft	1459	97
	Opium ordinance	694	63

National Detectives Agency

Types of cases and prioritization

Initial prioritization of LRSM cases is done by the Coordinating Committee National Detectives. This takes into account the *'Instruction for the tasks and deployment of the National Detectives'*.²³ The CCLR consultations take place between the chief public prosecutor (HovJ), the coordinating investigative prosecutor (CRO) as mandated by the PG, the policy officer at the office of the PG, and the acting head/acting coordinator operational affairs (COZ) of the LRSM. In the CCLR, prioritization is determined jointly. This may result in certain cases having to be shelved out of necessity. Motivation is also provided by the CCLR as to why a particular prioritization has been chosen. Due in part to the lack of capacity, the CCLR is currently allocating fewer cases to the LRSM. The agreement now is that only a maximum of five investigations may be carried out simultaneously. In this way the lead time is already taken into account at the front end. However, prioritization is highly dependent on the whims of the day (often shooting incidents), according to the OM/PPG.

The LRSM reports that with the progression of time, they have accumulated more experience and as a result, the LRSM knows how to work more efficiently on an investigation to complete it faster. Also, the LRSM can better weigh and prioritize cases. Furthermore, the LRSM is now in the process of further

²³ Instruction for the tasks and deployment of the National Detectives (2016.02)

streamlining the prioritization of cases within the organization by setting up an information desk.²⁴ This was already under way in the aforementioned "*Inspection Review National Detectives Agency*" (2021)²⁵ but has been on hold for about six months. There is now room to pick it up again, according to the LRSM.

The idea is that all information coming into the LRSM goes to the information desk first. The information desk enters into consultation with the intelligence prosecutor where it is considered whether the case will be picked up. If it is decided to pick up the case, a preliminary document is created and submitted to the CCLR. A decision is then made in the CCLR as to whether a more in-depth project proposal should be written or whether it should be submitted as an assignment to the LRSM for investigation. The above refers to issues that are not so urgent that they need to be prioritized immediately. This work method ensures that matters are better streamlined. In this way, cases can also be prioritized better, which also benefits lead time. Furthermore, the work process can be more information-driven. This work method is in writing but still needs to be embedded in the organization, according to the LRSM.

According to the OM/PPG, the lead times agreed in the CCLR for integrity and corruption investigations and financial crime investigations are often not achieved by the LRSM because these are complex investigations. This mainly because the LRSM has a capacity shortage. As indicated earlier, according to the LRSM's internal guidelines, complex cases take more than three months.

The LRSM further indicates that both the acting head/ Coordinator Operational Affairs (COZ) and the CCLR have an overall view of the LRSM's cases. There are currently three cases in various stages, one complex and two simple cases. The small number of cases currently makes it easy to monitor progress. The small scale of the organization also contributes to this. Previous cases are all fetch cases. There are no pending cases on hold ("parked" cases) nor is there a backlog of pending cases (shelf cases). Furthermore, according to the LRSM, hardly any large cases have come in since 2020 (see above). The LRSM indicates that sometimes such cases are assigned to the Detective Cooperation team/Anti-corruption Taskforce. According to the LRSM, this is probably due to a lack of capacity and the absence of a permanent head at the LRSM. In the event a new case arises, priorities are set on the advice of the acting team leader and the acting head/ COZ and in consultation with the CRO based on available capacity. The CRO makes the final decision.

The LRSM further indicates that the lead time of investigations has been problematic in the past and that it has happened that major investigations have had to be parked along the way, due to other priorities, that could not be picked up again until later. According to the LRSM, lessons have been learned from this and more consideration is now given to the lead time of cases. However, due to other priorities, the deadline set by the LRSM can still take longer than planned. This is mainly due to the lack of capacity. There is still no new head and the two departed RST detectives have still not been

²⁴The information desk is concerned with the active collection of information about possible criminal offenses within the LSM's mandate. The information gathered by the information desk is not immediately intended for investigations and is not accessible to others within the LSM. Only once the information has been processed can it be considered for use in an investigation. The information desk is staffed by two tactical detectives who have been assigned this task in addition to their existing duties.

²⁵Raad voor de rechtshandhaving, (2021). *Inspectieonderzoek Doorlichting Landsrecherche*.

replaced. Also, no financial detective can be provided because the RST itself is lacking in this area.

The recruitment of two new experienced tactical detectives in August of this year means that (more) cases can now be taken up again (simultaneously). This is perceived as a positive development by the LRSM. Due to insufficient specialties/ expertise, the LRSM is permitted by the ministry to recruit in both 2022 and 2023, according to the LRSM.

Shooting incidents by police officers are classified by the LRSM as simple cases. These types of cases are completed reasonably quickly by the LRSM due to pressure and/or their prioritization (see Table 6). Furthermore, the "work instruction on shooting incidents" sets deadlines for the handling of these types of cases. The OM/PPG indicates that shooting incidents have a negative impact on the lead times of the LRSM's investigations that are ongoing up to that point. This is because such an incident must be handled immediately and the capacity of the LRSM is scarce.

In- and outflow of cases

The LRSM provided the Council with an overview of the inflow and outflow of investigations during the period 2018-2021 (2018:8, 2019:5, 2020:9, 2021:8). During that period, of the total 30 investigations, nine were related to a shooting incident.

Table 6 shows for each year the date of inflow, the date of outflow, the type of investigation and the lead time in days of all cases recorded by the LRSM in that year. Regarding the lead time, the following can be seen in the table. In 2018, the lead time ranged from 85 to 1203 days (from just under 3 months to just over 3 years). When asked, the LRSM indicated in its reaction that the latter investigation had a particularly long lead time due to lack of capacity and low prioritization. Through assistance the investigation could still be completed.

In 2019, the lead time ranged from 66 to 293 days (from just over 2 months to over 9 months) In 2020, it ranged from 49 to 933 days (from just over a month to almost 3 and a half years). Regarding the particularly long lead time of 933 days, the LRSM indicated in its reaction that it was a project-based investigation that was taken up after the previously completed investigation.

Furthermore, the 2021 lead time ranged from 53 to 186 days (from a month and a half to over 6 months).

Table 6. Length of investigations LRSM 2018 -2021.

2018	Date inflow	Date outflow (OM)	Type of investigation	Length (days)	Status
1	08/02/2018	21/09/2018	criminal	225	closed
2	13/03/2018	28/01/2020	criminal	686	closed
3	05/04/2018	29/09/2019	criminal	542	closed
4	05/06/2018	28/05/2019	criminal	357	closed
5	06/06/2018	24/01/2019	fact-finding (shooting incident)	232	closed
6	18/09/2018	03/01/2022	criminal	1203	closed
7	16/10/2018	09/01/2019	fact-finding	85	closed
8	25/10/2018	23/01/2019	criminal	90	closed
2019	Date inflow	Date outflow (OM)	Type of investigation	Length (days)	Status
1	05/04/2019	10/06/2019	fact-finding (shooting incident)	66	closed
2	20/05/2019	07/10/2019	criminal	140	closed
3	23/05/2019	11/03/2020	criminal	293	closed
4	04/07/2019	03/01/2020	fact-finding (shooting incident)	183	closed
5	09/10/2019	02/01/2020	criminal	85	closed
2020	Date inflow	Date outflow (OM)	Type of investigation	Length (days)	Status
1	09/01/2020	05/02/2021	criminal	393	closed
2	03/03/2020	04/02/2021	criminal	395	closed
3	23/03/2020	05/05/2021	criminal	408	closed
4	23/05/2020	21/05/2021	criminal	363	closed
5	02/06/2020	22/12/2022	criminal	933	still ongoing
6	10/08/2020	19/11/2020	fact-finding/criminal (shooting incident)	101	closed
7	30/11/2020	08/02/2021	fact-finding (shooting incident)	70	closed
8	18/12/2020	05/02/2021	criminal	49	closed
9	26/12/2020	14/04/2021	criminal	109	closed
2021	Date inflow	Date outflow (OM)	Type of investigation	Length (days)	Status
1	01/03/2021	15/06/2021	fact-finding/criminal (shooting incident)	106	closed
2	12/03/2021	14/09/2021	criminal	186	closed
3	07/04/2021	15/07/2021	criminal	99	closed
4	22/07/2021	03/01/2022	fact-finding/criminal (shooting incident)	165	closed
5	05/10/2021	17/01/2022	criminal	104	suspended
6	17/10/2021	09/12/2021	criminal	53	closed
7	09/11/2021	24/01/2022	criminal	76	suspended
8	21/12/2021	30/03/2022	fact-finding (shooting incident)	99	closed

Public Prosecutor's Office

In the section above, the prioritization by the Steering Committee and the participation of the OM in this have already been discussed. The prioritization of cases handled by the LRSM and the bottlenecks surrounding this were also described. The steering of cases by the OM (including JASAP, the seven-week consultation and PRIEM (Public Prosecutor Registration and Information Management System)) is discussed further in the sections on steering and monitoring.

Prioritizing

In its aforementioned report on the investigation and prosecution policy of the OM, the Council noted that there were examples of cases in which prosecution took a long time and that the (potential) litigant was kept in the dark for a long time about a decision to prosecute or not. The Council therefore made the following recommendation to the Minister:

"Ensure that the prosecution, in accordance with the law, disposes of criminal cases within a

reasonable time and makes a decision to prosecute or not to prosecute as soon as possible."

A first review of this report took place in 2019, followed by a second review in 2021.²⁶ Both reviews found that the recommendation had been partially addressed. At the time, the OM was in the process of gaining more control over its internal work processes. Reference was made in this regard to the so-called "seven-week consultation" and the JASAP process. In addition, the more extensive criminal investigations were also to be discussed within the steering committee, which was meant to monitor the progress of the case. Furthermore, the intention was to better structure the PRIEM system and also to start working with management reports. This would be included in the further development of the system so that processing times could be better managed. With regard to prioritization by the OM, it emerged in the 2021 review inspection that in addition to having sufficient capacity and its impact on lead times, the prioritization and management of cases were also important prerequisites in connection with the timely handling and closing of cases. Furthermore, the prioritization of cases by the prosecutor's office was reportedly perceived as a bottleneck by the LRSM.

The OM/PPG notes that due to a lack of capacity there is less pressure on the services, for example, in cases involving a "released suspect", to devote capacity to complete the final report. However, if the case has to appear in Court, then efforts are made to file the final report. The KPSM confirms that less priority is given to cases involving "released suspects". The Council points in this regard to a newspaper article²⁷ in which is reported that a pro forma hearing in the case of three suspects arrested on June 20, 2022, who were not in custody at that time, was postponed until April 2023 because the police file was not yet complete.

The OM/PPG further indicates that there is a high influx of cases while the Court's hearing capacity is limited. The OM/PPG explains that in this context, for cases with a high priority, for example juvenile cases, it has been agreed internally that these cases and cases involving "first offenders" will be dealt with more quickly at a Transaction Public Prosecution (TOM) hearing. This is because the OM and some chain partners felt that the lead time for juvenile cases was too long.

TOM hearings give the Prosecution flexibility and also relieve courtroom capacity. JASAP cases are now more frequently heard at the TOM hearing, according to the OM. The session capacity has therefore been expanded to facilitate this. Now the session capacity is two days instead of the previous one and a half days and from October 1, 2022, instead of one (1) TOM session, two (2) TOM sessions per month will be organized. Sometimes thematic sessions are also organized where smaller cases on the same topic are settled.

TOM hearings and the possibility of monetary fines or minor community service affect being able to dispose of the case, which can be in favor of lead time, the prosecutor said. In the case of recidivism,

²⁶ Law Enforcement Council, (2021). General review of recommendations. Sub-inspection 2: Crime Prevention Fund; Investigative and prosecutorial policies of the Public Prosecutor's Office; Enforcement of fines, damages and dispossessions; The Public Prosecutor's Office in Incident-based investigation; Cooperation between Public Prosecutors Offices.

²⁷ The Daily Herald, 22-12-2022. *Two pro-forma hearings in unrelated drug investigations.*

the agreement is that the case will be brought to trial and cannot be disposed of through a TOM hearing. When choosing a particular disposal method, lead time is a factor but not one of the main reasons for choosing or not choosing a particular method. Other factors such as recidivism, interest of the victim and rights of the accused are more relevant factors, according to the OM/PPG.

Furthermore, according to the OM/PPG, it depends on the type of case as to how long it takes on average to reach the Court hearing. The OM receives a list of hearings from the Court on the basis of which they schedule cases. The internal agreement at the OM/PPG is that a case is not scheduled until it has been assessed.

The OM/PPG further states that for the year 2022, up to and including the month of August, 475 criminal cases have already been registered by the OM. According to the OM/PPG, this is particularly high compared to other years. The OM/PPG indicates that, in their opinion, this means that the police are quick on the uptake of cases and may have become faster in completing cases. However, neither the chain nor the system is currently equipped to handle the high influx of cases. The cases registered are a mixture in terms of type of cases, as they range from simple cases to complex cases.

The OM has made several overviews available to the Council by means of PRIEM to provide insight into the average lead time based on its disposal. Among other things, the OM registers in PRIEM the date on which the PV of a case is received. The date of inflow to the OM is the date the case is registered in PRIEM. Table 7 shows a summary of a random selection by the Council in the period 2018 - 2021 (total number of cases in 2018:150, 2019:234, 2020:131, 2021:172) of ten cases reviewed and disposed by the OM in each year. For each year, the date of inflow (registration), date of assessment, lead time in days and type of disposal are given. On this basis, an initial picture can be formed about the method of registration, the duration of the handling of the case and the type of disposal. In terms of lead time, the following can be seen in the table. In 2018 the lead time ranged from 4 to 513 days (from a few days to 1 year and 4 months), for 2019 it ranged from 1 to 306 days (one day to 10 months) and for 2020 it ranged from 2 to 462 days (a few days to one year and two months). Further, the lead time in 2021 ranged from 0 to 260 days (zero to 8.5 months). From the overview provided, it could not be determined what type of case (e.g., simple or complex) or type of offense was involved.

Table 7. Assessment and disposal of criminal cases OM 2018 -2021.

2018	Registration	Assessment	Duration (days)	Disposal
1	05-01-2018	21-08-2018	231	Summons
2	02-02-2018	11-05-2018	98	Summons
3	07-03-2018	01-08-2019	513	Summons
4	03-04-2018	22-06-2018	80	Transaction
5	29-05-2018	15-08-2018	78	Summons
6	09-07-2018	13-07-2018	4	Summons
7	09-08-2018	15-10-2018	67	Summons
8	18-09-2018	31-10-2019	409	Summons
9	16-11-2018	27-11-2018	13	Summons
10	18-12-2018	18-10-2019	306	Sepot
2019	Registration	Assessment	Duration (days)	Disposal
1	10-01-2019	24-01-2019	16	Summons
2	29-01-2019	28-02-2019	32	Summons
3	18-03-2019	22-05-2019	67	Summons
4	15-06-2019	17-06-2019	156	Summons
5	12-08-2019	11-06-2020	306	Transaction
6	02-09-2019	12-09-2019	11	Summons
7	18-10-2019	18-10-2019	1	Summons
8	01-11-2019	16-12-2019	45	Summons
9	12-12-2019	22-06-2020	194	Sepot
10	24-12-2019	18-03-2020	86	Summons
2020	Registration	Assessment	Duration (days)	Disposal
1	08-01-2020	09-01-2020	2	Summons
2	10-02-2020	10-06-2020	124	Summons
3	07-05-2020	19-05-2020	13	Sepot
4	08-06-2020	12-06-2020	6	Summons
5	20-07-2020	06-06-2020	10	Transaction
6	08-09-2020	14-12-2021	462	Sepot
7	09-10-2020	21-10-2020	12	Summons
8	22-10-2020	23-08-2021	305	Transaction
9	19-11-2020	01-06-2021	194	Summons
10	16-12-2020	25-02-2021	71	Sepot
2021	Registration	Assessment	Duration (days)	Disposal
1	25-01-2021	25-01-2021	0	Summons
2	10-02-2021	28-10-2021	260	Sepot
3	01-03-2021	01-03-2021	0	Sepot
4	06-04-2021	31-05-2021	55	Summons
5	25-05-2021	27-05-2021	2	Transaction
6	28-07-2021	29-07-2021	1	Summons
7	07-09-2021	08-12-2021	92	Sepot
8	14-10-2021	14-10-2021	0	Summons
9	22-11-2021	22-11-2021	0	Summons
10	01-12-2021	27-12-2021	26	Summons

3.2.5 Steering and monitoring in the context of lead time

Criterion: The personnel and resources of the services are aligned with the goals. One of the goals is to avoid exceeding the reasonable time period. Steering is therefore provided for the benefit of the lead time of cases of the investigative services. Furthermore, monitoring of the progress is also done within this context.

3.2.5.1 Strategic steering

Consultation as a steering tool

To facilitate (joint) the steering of the services, several consultations take place, including the aforementioned CCLR and the steering committee consultations (see section 2.2.4). In addition, a tripartite consultation, a management consultation and an OM consultation take place. The tripartite consultation (the Minister of Justice, the chief of police and the chief public prosecutor together with the Attorney General) is intended to discuss in particular the management aspects (including personnel and resources) of the KPSM. The ministry indicates that during these consultations mainly capacity issues are discussed. The interviewees did not name any bottlenecks regarding the various consultation forms in the area of cooperation.

In the management consultations (Secretary General, PG, Minister of Justice and Head of LRSM), which the ministry says take place at least twice a year, the management of the LRSM is discussed. The topics of resources, recruitment and capacity are discussed and the extent to which a solution to bottlenecks can be found, according to the ministry. The ministry further indicates that given the LRSM's ongoing capacity problem, this is a regular topic of conversation. The LRSM also indicates that in discussions with the ministry, the importance of sufficient capacity for the organization to be able to carry out its duties is repeatedly pointed out. The glaring lack of capacity at the LRSM was also the subject of the aforementioned 2020 Council report on the LRSM.

The lead time of the services is not a specific topic of the various consultations mentioned above. However, preconditions affecting the realization of the services' objectives are discussed, including the expeditious handling of cases in favor of a reasonable time.

People and resources

Previous Council inspections have already shown that the judicial services, including the KPSM and the LRSM, face a structural shortage of people and resources. The ministry points out that there is still no additional money for the recruitment of staff at the various services. There is no room in the budget for this either. In addition, the Ministry of Justice has been asked by the Ministry of Finance in 2022 to cut over ANG 1.3 million on the police budget by 2023 and more specifically also to cut back on overtime and recruitment. This while according to the Country Package, the operational capacity within justice should not be cut back on. The Minister of Justice therefore sent a letter in 2022 to the Secretary of State for the Interior and Kingdom Relations in the Netherlands to indicate that despite the agreements, cuts will be made to the judicial services and to discuss how to deal with this. This letter has not been made public by the Minister of Justice. People and resources, as indicated earlier, are seen as preconditions for the expeditious investigation and prosecution of crimes, among other things. In the event that the shortage of people and resources persists, the practical result will be that the lead time of cases at the services will not be reduced.

The OM/PPG indicates that it has raised the issue several times with the Ministry of Justice and Security (JenV) in the Netherlands, that although the Netherlands is investing considerably in the Dutch services in the region, these being the Detective cooperation team (RST), the Royal Netherlands

Marechaussee (KMar) and the Dutch Caribbean Coastguard (KW), the reinforcement of the national services on the islands lags behind in comparison (police forces, national detectives, OM and sitting magistrates). This will lead to serious bottlenecks if the KW, the KMar and the RST start investigating and completing more cases. The diabolical effect is referred to, namely that if the transnational services are strengthened at the front end, the other subsequent local services in the chain must also be strengthened to meet the demand for more investigation, prosecution and trial. The current investments by the Netherlands will lead to a new case flow. This is expected to have a negative impact on lead times and meeting reasonable timelines if the KPSM, the LRSM, the OM and the Court, among others, do not grow accordingly in terms of people and resources. The OM/PPG indicates that they can only raise this issue with other services because the OM is not in charge of decision-making or funding.

Steering of information systems

The Foundation for the Management of ICT for Law Enforcement (SBIR) is responsible for the shared ICT facilities of several partners within the law enforcement chain in Sint Maarten. For example, the OM cooperates with the SBIR with regard to PRIEM and the KPSM cooperates with them with regard to Actpol, to which a detective module was recently added. These systems register the inflow and outflow of cases with which, among other things, the lead time within their own organization can be calculated (see 3.2.4).

Performance indicators

According to the 2021 annual plan of the PPG, the PG, in his role as overseer of the Prosecutors' Offices, makes performance agreements on the quality and quantity to be delivered and these are included in the individual annual plans of the Prosecutors' Offices. The OM's (SXM) 2021 annual plan includes the following performance indicators relevant to this inspection:

Table 8. Key figures and performance indicators OM

Description	Key figures	Performance indicators
Inflow PV's including police: Offenses (number of prosecution office numbers)	550	
Maximum inventory (in process/not ready for hearing): Offenses (percentage of the inflow)		30%

Currently, the prosecutor's office has little to no work inventory and it can be characterized as healthy, according to the OM/PPG. In consultation with the administration, the intention is to build up an inventory for hearings of about ten cases in order to use the space for hearings more efficiently. The above will then have a positive effect on the lead time for those cases. These are cases in which there is no defendant being detained, according to the OM.

The annual plans of the various investigative agencies are sometimes provided with performance indicators to be achieved for the coming year. The annual reports then indicate the extent to which the desired results have been achieved. The KPSM reports that the OM includes performance indicators in its annual plan, and the KPSM then adopts them in their annual plan. There are no specific

performance indicators set in the OM and KPSM annual plans in the context of lead time that could have an effect later in the process on the reasonable time.

The OM/PPG also states that no performance indicators are agreed upon with the services in favor of the lead time. According to the OM/PPG, agreeing on performance indicators is still a thing of the future for the LRSM. Agreements can be made, but because of the known bottlenecks in the prevailing preconditions, it is clear in advance that they will not be achieved.

The LRSM's annual plans include performance indicators regarding the number of cases to be carried out. According to the LRSM, the 2022 annual plan states that the LRSM must carry out five cases this year, of which two are projects (major cases). The current three investigations that are ongoing were all allocated in 2022. The LRSM further states that as early as 2021, it had been their intention to establish deadlines ("lead time") for investigations and stick to them. But given the number of limited investigations they received; this was not necessary. It is pointed out that they are now working according to the aforementioned guideline established by the LRSM on the duration of investigations so that it can be seen if the deadlines applied are realistic.

3.2.5.2 Operational steering

Public Prosecutor's Office

Consultation as a steering and monitoring tool

As part of the monitoring of internal processes, the OM had been working with the "seven-week consultation" since 2019, according to what can be read in the Council's report on the OM's investigation and prosecution policy.²⁸ During this current inspection, the OM indicated that consultations came to a halt during the Covid-19 period and have not resumed since. However, this is not seen as a shortcoming by the OM because there is now better contact between the administration of the OM and the Court. There is strict control over the preparation of a case for trial, according to the OM. The required documents are checked against a checklist that is initially completed by the assistant public prosecutor.

Then, eight weeks before the hearing, the administration makes the preparations for the case. On the basis of the checklist completed by the assistant public prosecutor, a check is made to see if any information is missing, and a discussion is held with the prosecutor or the assistant public prosecutor to determine whether the information is still relevant to the handling of the case at the hearing. The administration then reports to the Court.

From the legal profession it is indicated that a lack of steering by the OM with respect to the KPSM to ensure a complete file can affect the lead time of cases. An example mentioned is that the necessary documents are not received in a timely manner during the pre-trial detention phase of a suspect, resulting in his release from custody, among other things, increasing the lead time. The attorney

²⁸ Law Enforcement Council, (2019). Review inspection into the implementation of the recommendations regarding selectivity in the investigation and prosecution policy of the Public Prosecutor's Office in Sint Maarten.

interviewed receives access from the OM to the suspect's digital file, and it sometimes occurs that the file is not complete. An example is that a forensic report may be missing or that reference is made to an earlier PV that is not present in the file. When this is discovered, it is raised with the OM. The OM then enters consultation with the KPSM to obtain the documents. The interviewee is of the opinion that the OM, as leader of the investigation, should steer this process better. This means that the OM should ensure that the documents are provided by the KPSM in a timely manner. In cases involving a serious crime, the judge of instruction is often accommodating so that the missing documents can still be provided, according to the interviewee.

Information system as a control and monitoring tool

The PRIEM system has been further developed by the OM and the focus is now particularly on developing the execution module further. In this module it will be possible to monitor deadlines. At the moment there are no automatic notifications built in as far as deadlines are concerned. However, it is possible to query the lead time of cases. The lead time of a case is now processed and tracked by the assistant public prosecutor in the case. The OM is now also working on a hearing's module that, among other things, provides insight into how much time is needed for a case. Furthermore, at the beginning of the year, the administration generates a list of all open cases so that a decision in these can still be made by the relevant prosecutors.

Police Force Sint Maarten

Consultation as a steering and monitoring tool

As indicated earlier, during the steering committee consultations, the KPSM cases are not only prioritized but also directed and monitored.

According to the KPSM, the guiding principle for each case is to complete it "as quickly as possible," whereby prioritization and whether or not the suspect is known, are leading. This is also workable as long as there is proper steering and monitoring. After all, achieving the lead time depends on monitoring by the team leader(s), but due to the high workload this does not always go well, according to the KPSM. The AR states that the OvJ is leader of the investigation and that the KPSM is responsible for how the cases are operationalized. In this process, it is important that the desired investigative actions are realistic and that the capacity of the KPSM is taken into account.

The OM/PPG indicates that through the steering committee, it has good insight into the KPSM's work inventory as far as prio-1 cases are concerned but has the least insight into the AR's cases. Therefore, the OM and the AR have agreed to come together for a clean-up exercise in the near future. According to the KPSM, the last time the OM conducted a clean-up exercise of the work inventory was in 2016. The lead times then were longer than they are now, according to the KPSM. The fact that there are now fewer cases on the shelf than before is due to the expansion of the criminal investigation capacity and the introduction of the JASAP working method for prio-3 cases, noted the AR.

The team leader and team elder are responsible for prioritizing cases. This is done based on a plan of action for each case. Cases are checked regularly by the team leader, and once a month by the division

chief, who then consults with the team leader. The fact that there is only one team leader for the division, when there should officially be two, means that the workload is high. The workload is also higher among detectives than the already existent workload, partly because detectives sometimes work on cases on their own initiative without the knowledge of the team leader. This has a negative effect on the lead time, as the detectives then have more cases under their belt than intended. Finally, case files are presented to the OM by the AR, which sometimes need to be supplemented. It is not often that case files are returned because of a lack of quality or because they are incomplete, according to the AR.

However, the OM/PPG reports that cases (final PV's) from the KPSM regularly arrive at the OM that are not ripe for the hearing. These cases are then reviewed by the OM.

The OM/PPG further indicates that in large investigations, steering is done on an ongoing basis through the consultations that take place. In smaller investigations, this is not the case and they are not assessed until they reach the OM. Nevertheless, the agreed upon deadlines are generally met, according to the OM/PPG. Furthermore, the OM/PPG points out that in cases involving pretrial detention, the OvJ always reads along in connection with the (legal) deadlines, which then facilitates steering.

Information system as a control and monitoring tool

The files of the AR's cases have been made accessible in a central database to AR detectives and the information desk of the KPSM. In addition, the team leader, the acting section chief and the division chief also have access to this database for the purpose of their control function and to ensure continuity. By means of a journal that is kept daily, the agreements made about the investigative actions with corresponding deadlines are displayed. According to the AR, there is a good overview of the cases and, based on the journal, the number of cases per detective can be managed. There is daily consultation between the AR team leader and the prosecutor on duty concerning the investigative actions to be taken. The journal serves as input for this. In addition to the team leader, the OvJ also monitors deadlines, according to the KPSM.

All information about a case is entered into the case screening system by the team leader. This is checked by the acting section chief. JASAP cases and the prosecutor's decision are also recorded in the case screening system. The KPSM indicates that basically all cases (except large cases, which are stored separately in Word files) of the criminal investigation department are registered in this system. Since August 15, 2022, the detective module in the program Actpol is also being used. The recorded criminal complaints are mutated in Actpol. It is the intention that in the long run all documentation (central database and case screening) will be registered in Actpol, including the outflow of the final PV's sent to the OM. According to the AR, the Actpol program also helps to improve the steering of the team. However, the lead time of cases is not automatically monitored by either system. According to the KPSM, this is and remains the responsibility of the team leaders.

National Detectives Sint Maarten

Consultation as a steering and monitoring tool

In its aforementioned General Review (Sub-inspection 2, 2021), the Council noted a number of concerns regarding the lead time of LRSM cases. Namely, that delays in case handling can affect both the LRSM and the prosecution. This is not only because the OM is sometimes dependent on the speed with which the LRSM completes its investigations, but also because cases submitted on time were not always brought to trial on time by the OM. A lack of capacity at the LRSM also affected the lead time. Furthermore, the Council noted during the review inspection that regular consultations were held by the CCLR since 2021.

Steering by the OM on LRSM cases is currently perceived by the LRSM as good. The OvJ with the LRSM in his portfolio tries to stay on top of the cases and there is regular consultation about the next steps. In principle, there are consultations once a week between the prosecutor, the acting team leader and the acting COZ/the acting head. The agreements made during the consultations are also kept, according to the LRSM. Officially, the COZ is responsible for steering and monitoring the lead time of investigations. In practice, however, this is done by both the COZ/ the acting head, and the acting team leader. For each investigation, a plan of action is used that includes a target date. According to an interviewee from the LRSM, there is still room for improvement with regard to the lead time of the investigations, and tightening the steering and monitoring of the investigations could contribute to this.

Weekly case consultations also take place between the team leader and the detective, or with the team leader and the case prosecutor, who is also the information prosecutor and prosecutor of the criminal intelligence team. If necessary, these consultations may be more frequent or consultations may take place by email. Depending on the type of agreement (investigative act) made with the case prosecutor, a deadline may be imposed. The prosecutor has no role in monitoring the target date, but does manage the status of the investigation through consultation. Based on the available information, the prosecutor can verify that the agreed upon actions have been taken by the LRSM.

Furthermore, the LRSM has an internal morning briefing (consultation) twice a week in which ongoing investigations are usually discussed. In preparation for this, the journal is consulted by the team leader, according to the LRSM.

When an agreed target date approaches, this is discussed by the team leader with the detective, and if the target date still cannot be met, a solution is sought. According to the LRSM, the foregoing is infrequent. The LRSM adds that if the deadline is missed, the reason is usually already known to management. This may be, for example, due to other priorities or because the LRSM is waiting on information from third parties.

There is no maximum number of investigations per detective. Small cases are assigned to one or two detectives. This also applies to large cases, with the understanding that others can step in if needed. For very large cases, the entire team is called in. An interviewee from the LRSM notes that there are

advantages to having the entire team working on a case. This is because tasks can then be divided between them and there is more involvement from team members. Detectives are then also given more opportunity to grow in certain tasks. If there is a shortage of capacity, temporary assistance from the RST can also be requested. If granted, specific agreements are made regarding the time frame of the investigation and any overruns must be well justified. With assistance, the case does not remain on hold and therefore it benefits the lead time, according to the LRSM.

According to the LRSM, files often first go to the OM in draft form for feedback. The prosecutor then decides whether additional actions need to be taken in connection with the hearing. Because the prosecutor is involved in the entire LRSM investigation, is kept informed, consults on it, and makes decisions, it almost never happens that the prosecutor is not aware of (part of) the contents of a file when it is submitted.

The LRSM does report that in larger cases it is more difficult for the prosecutor to stay informed than in smaller cases. The ability of the prosecutor to prepare cases also depends on the available capacity at the OM and the fact that the current case officer, as indicated earlier, also fulfills other roles. However, this is not seen as a bottleneck by the LRSM. Because of the lack of expertise at the LRSM, they also believe that it is essential that the prosecutor has the necessary knowledge to properly manage the LRSM.

Information system as a control and monitoring tool

LRSM resources are still minimal according to all interviewees. However, according to those interviewed, this does not create bottlenecks for the lead time of investigations, with the exception of forensic investigations of telephones. However, the acquisition of a full-fledged investigation system, for example, would have a positive influence on the lead time. The LRSM sees a solution to this in a possible collaboration with the SBIR. In the absence of a business processing system, the LRSM has been using the still under development National Detectives Information System (LRS), built internally by the LRSM's ICT (digital analyst) since 2020/2021. According to the LRSM, the LRS contains a journal in which, among other things, the work assignments of the investigations, the agreements such as the target date, and investigative actions by the detectives are recorded and maintained. The PV's can also be linked to the mutations. The journal is regularly monitored by the team leader and the state of affairs is discussed daily with the detectives. Previously, everything was done in the "Word" application, and work has already begun to incorporate the "Word" documents into the system. Although requested by the inspectors of the Council, they were not yet able to view the system.

4. Analysis, conclusion, and recommendations

4.1 Analysis

It is the intention that the efforts of the KPSM, the LRSM and the OM should not only lead to the detection and prosecution of offenses committed by suspects but also that this should be done within an acceptable time. This is to provide clarity to the accused and the victim, but also to prevent the application of sentence reductions by the court if the reasonable time is exceeded. The ultimate goal of this is to maintain public confidence in the criminal justice system. The Council concludes from the inspection that in particular the two factors, which also according to the Supreme Court can influence the duration of a case, namely the type of case (the complexity of the case) and the manner in which the case is handled by the competent authorities, also influence the lead time of criminal cases in the judicial organizations in Sint Maarten. These are discussed in more detail in the following paragraphs.

4.1.1 Legal framework and policies

Local laws and regulations either mention hard deadlines or use the more general term "as soon as possible". The obligations as mentioned in the international treaties are applicable in St. Maarten and have been implemented in local laws and regulations. The legal framework is thus in accordance with international obligations, according to the Council. In case deadlines are exceeded, sanctions are available to the courts. If the reasonable time is exceeded, this is reflected for the prosecuted cases in the judgments, as the judge in St. Maarten then applies (has applied) sanctions. It concerns for the period from 2018 to 2022 a handful of judgments in which sanctions were applied.

Furthermore, there is no general and/or specific written policy established by judicial organizations, on the processing time of criminal cases. The LRSM, on the other hand, does have a guideline, which is currently being applied to see if it is feasible. The Council already conducted (follow-up) a review on the investigation and prosecution policy of the OM and also made recommendations in that context (reports 2015/ 2019/ 2021). Based on the current inspection, the Council concludes that there is currently no need to establish a policy on the lead time, as it is currently not a bottleneck for the departments and the OM as it was in the years prior to 2018. It would be desirable in the future, however, according to the Council, in the context of efficiency, transparency and continuity, to establish policy on this. Especially since the LRSM has a guideline and the OM indicates that they wish to have maximum time periods for scheduling certain cases for hearings and expect that the time period for being able to schedule a hearing will increase.

4.1.2 Lead time

There is no overall view of the lead time of the entire criminal justice chain at the services. Nor was the Council able to gain insight into this during the inspection. The Council was able to provide an initial picture of the average lead time of the most common categories of cases at the individual services. However, the figures provided only give an impression and not a complete picture of the situation (see section 3.2.4). This is partly because the various registrations and systems used are not the same. On the basis of the figures, the interviews and the number of sentence reductions in the

period under review, the Council has the impression that the lead time of criminal cases, and thus the detection and ultimate prosecution of criminal offenses within an acceptable time, has been improving in recent years. However, in order to be able to really say something about the lead time of and between the organizations and thus the chain-long lead time, it is important that the registration and the systems used are in sync. The Council therefore believes that in the context of steering and for the benefit of the reasonable time, more insight must be gained into the lead time of cases at both the organizations and in the chain.

There are bottlenecks that affect the duration (see section 3.2.5). These bottlenecks are not directly related to the lead time, but they do affect it. This is when lead time can actually become an issue. This makes it even more important that the services prioritize, steer and monitor effectively during the investigation. This way, bottlenecks will come into view sooner and a solution can be found.

Even if during prosecution the assessment by the OM takes place within an acceptable period of time, the available courtroom capacity at the Court can possibly play a role or form a bottleneck. The OM therefore tries to handle certain types of cases as quickly as possible through TOM hearings. The Council expresses its appreciation for this. Nevertheless, the Council urges the OM to enter into early consultations with the Court to (continue to) address their concerns about being able to schedule and settle criminal cases in a timely manner.

4.1.3 Type of case and prioritization

The Council notes that several factors (including prioritization) affect lead time. In addition, the type of case (simple or complex), the type of offense and hard deadlines (e.g., detained suspects) also play a role. The complex/large criminal cases of the KPSM have long been prioritized by a so-called steering committee in which the impact and feasibility of the cases are leading. Cooperation in this regard is perceived as good by both the OM and KPSM. In previous inspections, the Council has often recommended focusing on continued cooperation. As far as this issue is concerned, it is bearing fruit.

Criminal cases of the LRSM are prioritized and monitored by the CCLR and consultation now takes place on a structural basis. In the Council's aforementioned inspection of the National Detectives agency (2020), there was a perceived tense relationship between the LRSM and the OM on how criminal cases were prioritized and steered by the OM/PPG at the LRSM. The Council noted during this inspection that this has since changed and that both organizations recognize the shortcomings but also the opportunities in which the LRSM can work efficiently and achieve results despite the dire lack of people and resources. This is evidenced, for example, by the CCLR's decision to table two cases in 2021 that were not feasible. This freed up capacity and allowed the focus to be placed on other feasible cases. In addition, only a few, particularly small cases and few complex/large cases have been assigned to the LRSM by the CCLR over the past few years due to a lack of capacity and expertise at the LRSM. The Council is concerned about this as the LRSM is the designated service to investigate these types of cases and is hampered in this because the preconditions for being able to do the work are not being met. If no cases are assigned, the lead time plays no role. And due to the limited number of cases assigned, the duration of the lead time is manageable. The Council previously made recommendations in its report on the LRSM about the preconditions that still apply and in it also

pointed out the risks in not addressing them. Recruitment also is a common thread here, namely the inability to fill available FTEs/ critical positions.

Naturally, the complexity (simple or complex) of a case affects the lead time, due to the required investigative actions and deployment of detectives. Given the acute shortage of detectives with the necessary expertise, the timely handling and completion of particularly complex cases will remain a challenge for both KPSM and LRSM for the foreseeable future.

The KPSM and the OM have made good progress in handling simple cases thanks to the reintroduction of JASAP, the benefits of which everyone endorses. The quick decisions in these by the OM are of great importance in settling cases within the 6-hour deadline. The Council therefore advocates that the KPSM and the OM continue to provide the necessary capacity for this purpose. The Council also believes that an evaluation of the work processes in this context can provide the necessary insights and possibly even improve the results.

4.1.4 Steering and monitoring

Steering and monitoring of progress takes place through various forms of consultation. These consultations do not specifically concern the lead time of cases. Management aspects in particular are discussed that may (indirectly) affect this. The steering of the services at the strategic level by the Ministry, for example, by means of budgets and policy, indirectly influences the lead time of cases. For this reason, the ministry needs to match the people and resources of the services to their goals, which would also have a positive influence on the lead time. The Council found that this synchronization does not always take place. This is mainly due to the shortage of people and resources. The Council therefore believes that a solution must be found to the capacity problem, especially with regard to critical positions, such as a service head LRSM.

The OM/PPG and the investigative services have been trying for years to impress upon the Ministry the importance of investing in their organizations, but the financial reality in which the country constantly finds itself continues to play a negative role in realizing their further professionalization. Precisely because of the limited financial resources, the Council recommends that the ministry, in consultation with the services, develop a strategic vision/goals for the services to prevent, for example, arbitrary prioritization of crime problems and create direction and clarity for all parties. Strategic direction can, among other things, ensure that available people and resources are more efficiently aligned with goals. The investments currently taking place within law enforcement as part of the Country Package, to strengthen the rule of law, are primarily focused on inter-island services. While this is certainly a positive development, it could potentially have a negative impact on the local services if the same attention is not given to them, as also pointed out by the OM/PPG and for which the OM/PPG calls attention to. The Council therefore believes that the local services should also be enabled to grow to continue to perform the necessary tasks and meet demand.

Effective operational management of the services requires that the OM has insight into the cases and that management and progress monitoring within the services is in order. The AR represents a point

of attention in this regard. Especially regarding the high workload for both the team leader and the detectives. The Council finds the situation with only one team leader very vulnerable. Therefore, the Council draws attention to this. Also, the timely completion and quality of the cases (final PV) based on the hearing list could be improved and the Council encourages the KPSM and where possible the OM to support the AR more on this point. The Council considers the planned clean-up exercise together with the OM a good starting point and believes it should be carried out as soon as possible. The investigative agencies and the OM use various forms of consultation and information systems to monitor the progress of cases. Crucial to this is having enough experienced team leaders who can exercise the necessary quality control and ensure that cases handled are completed fully and on time. According to the Council, it is therefore important that departmental leadership be given the opportunity to acquire the knowledge and skills required for this task. Here also lies a task for the Ministry to ensure that this becomes part of, for example, the training plan drawn up by the Ministry for the services.

As far as the information systems of the services are concerned, the introduction of the detective module of Actpol, after years of delay, is considered an asset by the Council, especially since the intention is that all the data of each case will eventually be available centrally through this system. The LRSM, despite limited resources, has built its own information system, which is considered a vast improvement. The Council expresses its appreciation for this and looks forward to seeing the system in operation for itself. Furthermore, following the findings of the Council's 2019 report, the OM's PRIEM registration system has been developed further and allows management reports to be generated and the lead time of cases to be better managed. However, the system is still undergoing further development. However, the information systems used by the services are all three unable to automatically monitor the deadlines of investigations. This therefore requires the necessary manual monitoring of the progress of investigations by management (team leaders). The various consultation moments mentioned above are ideally suited for this purpose, in the Council's view, and the Council urges the departments to make optimal use of them.

The services are positive about the results currently being achieved. The Council itself cannot make any firm statements on this given the limited analysis that has been conducted of the available data and that the Council has been able to perform. For the period from 2018 to 2021, the Council has however presented the average number of days of inflow and outflow of investigations for each organization in Figure 2.

Figure 2. Average number of days in- and outflow of cases KPSM/LRSM/OM: 2018 – 2021.

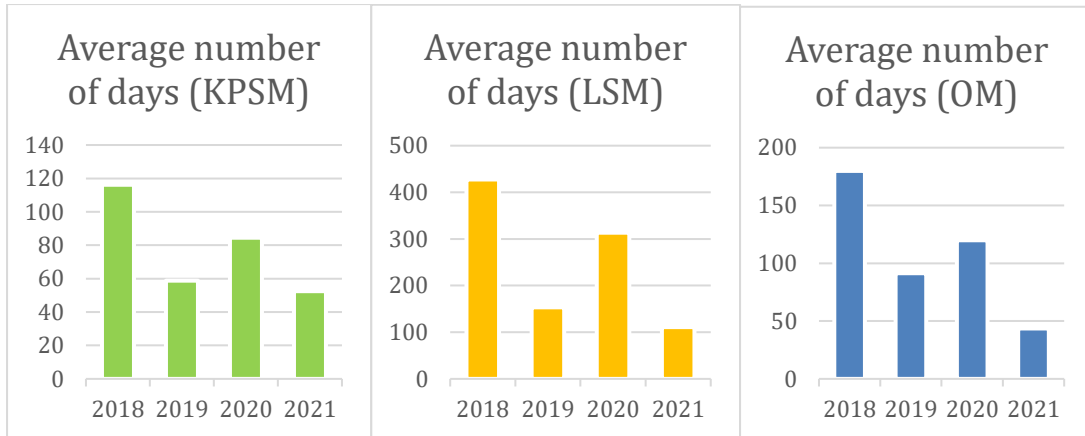
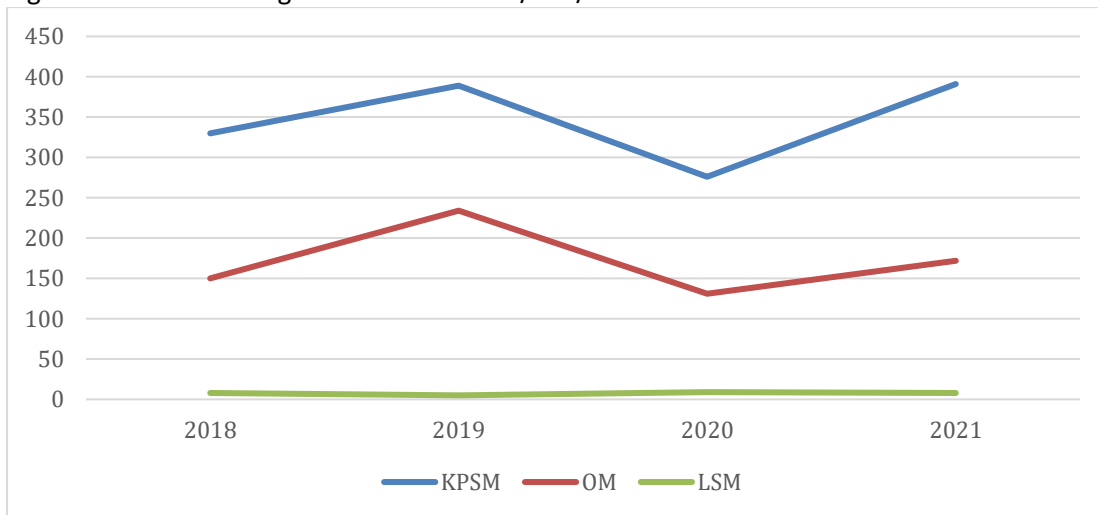


Figure 2 shows that in 2018 the average lead time for the KPSM was 116 days, 58 days in 2019, 84.5 days in 2020* and 58.8 days in 2021. For the LRSM, the lead time was 427 days in 2018, 153.4 days in 2019, 313.4 days in 2020* and 111 days in 2021. As for the OM, the average lead time was 179.9 days in 2018, 91.4 days in 2019, 119.9 days in 2020* and 43.6 in 2021. Overall, it can be concluded that the average duration of individual services' investigations based on the Council's sample decreased over the years. Except for 2020 due to the Covid-19 pandemic. This, according to the Council, supports the view of the various organizations and interviewees that the lead time at these organizations is not currently a bottleneck. Because the data and registration of the various investigative agencies and the OM do not match, nothing can be concluded about the expediency of the entire chain's lead time in favor of a reasonable time period.

Figure 3 shows the number of cases registered by the various organizations for the period under review.

Figure 3. Number of registered cases KPSM/OM/LRSM: 2018 – 2021.



The graph shows that the number of cases registered by the KPSM increased from 330 to 390 between 2018 and 2021. There was also an increase in the number of cases reviewed by the OM over the entire period, from 150 to 172. The Council indicated earlier that 2020 was a more unusual year because of

the Covid-19 pandemic. The LRSM registered eight cases in 2018, five cases in 2019, nine cases in 2020 and eight cases in 2021. For the LRSM, the number of cases registered has remained virtually the same over the years.

The Council concludes that despite the fact that the steering at the strategic level could be better, and the number of cases has increased or remained the same (the LRSM) and the preconditions are not in order, the judicial organizations generally succeed in completing criminal cases expeditiously.

4.1.5 Bottlenecks

The departments have reported that although resources are limited these do not create bottlenecks in terms of achieving the lead time. Therefore, the bottlenecks identified by the Council in terms of being able to expeditiously handle criminal cases in favor of the reasonable time relate to the lack of general preconditions such as capacity and expertise. Although they are not directly related to the processing time itself, they may affect it. The Council has concluded in this inspection that this is not currently the case. In addition, there are other factors that are also perceived as bottlenecks by the organizations but over which they have no control. These include waiting for information from third parties and hearing capacity. The Council therefore concludes that the bottlenecks in terms of the lead time are mainly indirect and external.

4.2 Conclusion

Despite the bottlenecks in the area of preconditions for handling cases, according to the Council, both the KPSM, the LRSM and the OM generally succeed in handling the investigation and prosecution of cases as soon as possible or expeditiously in favor of a reasonable time being met. And have also been achieving this in recent years (2018-2021). Predominantly in the cases handled for at least three of the most common offenses. Therefore, the Council concludes that in the last four years, the obligation of the investigative services and the OM to expeditiously handle the cases picked up and to be prosecuted is largely achieved in favor of the reasonable period of up to 2 years. Therefore, the Council's previous recommendation on the OM taking a decision as soon as possible to prosecute or not to prosecute and to dispose of the cases within a reasonable time in accordance with the law is assessed by this inspection as having been complied with.

By extension, the Council concludes that the judicial organizations are currently sufficiently equipped to expeditiously finalize criminal cases. This is achieved by ensuring the necessary prioritization at the operational level and better steering and monitoring of cases through various forms of consultation and information systems. In this way, the investigation services and the OM succeed in limiting the lead time of cases for the most part. The services and the OM succeed in this despite the structural lack of certain general preconditions for carrying out the work, such as capacity. In terms of control, the Council still sees opportunities for improving the organization of the registration and the systems used.

No major investments are possible in the short term due mainly to budgetary constraints. In particular, the lack of investment and (operational) support for the LRSM still worries the Council.

Finally, the Council points out that the expeditious handling of cases by judicial services is in the interest of both victims and suspects. Therefore, the Council hopes that the following recommendations can contribute to improvements in this area and will be prioritized in the shortest possible time.

4.3 Recommendations

Table 8. Recommendations to the Minister of Justice

	To the Minister of Justice
1	Develop strategic goals for an efficient allocation of the available resources in relation to the objectives in consultation with the investigative services.
2	Ensure that the JASAP work method is evaluated by the investigative services for even better results.
3	Encourage the investigative services to continue to free up capacity for the JASAP work method to ensure continuity.
4	Ensure that the preconditions (e.g., capacity) of the investigative services are met to meet the increasing needs and to enable them to (continue to) conduct investigations expeditiously.
5	In the context of steering and for the benefit of an expeditious lead time, ensure that the registration and the systems used by the investigative services and the Public Prosecutor's Office are set up in such a way that the lead time of both the organizations and the chain is clear.
	To the Minister of Justice regarding the OM
6	Engage in consultation with the Court as soon as possible about possibilities to increase the hearing capacity.
7	Ensure that there is more insight into the affairs of the AR, for example by carrying out a clean-up exercise together with the KPSM.

Colophon

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